

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHN A. KUPKER, an individual,

Plaintiff,

v.

AETNA LIFE INSURANCE COMPANY, a
Connecticut corporation,

Defendant.

CASE NO. C04-106C

ORDER

This matter comes before the Court on Defendant Aetna Life Insurance Company's Motion to Clarify April 27, 2005 Order and Issue a Remand ("Motion to Remand") (Dkt. No. 47), and Plaintiff John A. Kupker's Motion for Award of Attorney's Fees and Costs, Retroactive Benefits and Prejudgment Interest ("Motion for Award of Benefits") (Dkt. No. 51). The Court has considered the papers submitted by the parties, and hereby finds and rules as follows.

On April 27, 2005, this Court denied Defendant's motion for summary judgment because it found that Defendant failed to conduct a full and fair review of Plaintiff's claim for long-term disability benefits. The Court also, however, denied Plaintiff's motion for summary judgment based on the finding that an issue of material fact remained as to whether Plaintiff is able to perform his own occupation or any other occupation. The Court now clarifies that, under Ninth Circuit precedent, remand of this matter to the

claims administrator is the appropriate remedy. *See, e.g., Schadler v. Anthem Life Ins. Co.*, 147 F.3d 388, 398 (9th Cir. 1998); *Saffle v. Sierra Pacific Power Co.*, 85 F.3d 455, 460 (9th Cir. 1996). An award of retroactive benefits and prejudgment interest, and attorneys' fees and costs, is no more appropriate now than it was when the Court denied the parties' cross-motions for summary judgment.

IT IS SO ORDERED:

- (1) Plaintiff's Motion for Award of Benefits is hereby DENIED;
- (2) Defendant's Motion to Remand is hereby GRANTED;
- (3) The Court hereby clarifies its April 27, 2005 Order as follows:
 - (I) The May 31, 2005 trial date scheduled in this matter is hereby stricken;
 - (ii) This matter is hereby remanded to Aetna, as claims administrator, to conduct a full and fair review of plaintiff's LTD claim; and
 - (iii) The parties are directed to notify the Court of the outcome of the administrative appeal.

SO ORDERED this 23rd day of May, 2005


UNITED STATES DISTRICT JUDGE